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November 27, 2013

Hon. Socrates P. Manoukian
Dept. 19, 161 North First Street
San Jose, CA 95113

Re: Ameriprise Financial, Inc., et al. v. XimpleWare Corp (No. 1-13-CV-256454)

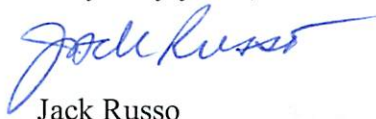
Dear Judge Manoukian:

Last week, the parties appeared on Ameriprise's *ex parte* application to enforce deposition subpoenas related to a case between Ameriprise and non-party Versata Software, Inc. that is pending in Texas state court. Also pending are two cases that XimpleWare has brought in the U.S. District Court for the Northern District of California. As of last Friday's hearing, XimpleWare was planning to file with the federal court an *ex parte* motion for mutual expedited discovery and for a temporary restraining order; that XimpleWare expected that motion would be heard early this week; and that XimpleWare expected that motion might moot much or all of Ameriprise's *ex parte* application with this Court. The Court will recall that it issued an order continuing the hearing on Ameriprise's *ex parte* application to next Monday, December 2 at 9:00 a.m., a copy of which is attached.

XimpleWare did file its motion in federal court, and the assigned U.S. Magistrate Judge scheduled a hearing for Wednesday, November 27 (today). However, yesterday, Versata filed in the federal court a declination to proceed before a Magistrate Judge. XimpleWare's hearing was taken off calendar and then reset to Wednesday, December 4 before District Judge Illston. A copy of the federal court's rescheduling order is attached. Unfortunately, that new hearing is two days after this Court had scheduled its continued hearing on Ameriprise's *ex parte* application.

Accordingly, XimpleWare respectfully requests that this Court again continue the hearing on Ameriprise's *ex parte* application, but only to either Thursday, December 5 or the morning of Friday, December 6. That will allow the federal court to issue its ruling on the pending expedited discovery and TRO motion, as previously contemplated; and it will still be ahead of the date tentatively set for XimpleWare's deposition, December 6. Indeed, we believe this Court can and should continue the hearing to the morning of December 6 as there should certainly be a ruling by the Federal Court by then and worst case under the Federal Court's view or this Court's view (or both) the deposition of XimpleWare starts later that morning. We enclose a proposed Order and we remain available by phone to discuss the same with you and with opposing counsel.

Very truly yours,



Jack Russo

cc: Opposing Counsel